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## *Caesaropapism and the Reality of the 4<sup>th</sup>–5<sup>th</sup> Century Roman Empire\**

### Abstract

The relationships between the secular authorities and the ecclesiastical hierarchy in the Roman Empire of the discussed epoch do not follow the simple pattern known as “caesaropapism” or other similar models of sovereign’s supremacy over the church hierarchy within the “State church”. The reality was much more complex then, since a new model, known as “symphony” began to develop. The notion of “symphony” should be understood as a kind of close cooperation of both powers within the uniform Christian society. Popes strongly affirmed the primacy of Rome within the church. At that time the theory of Pope Gelasius and the doctrine of St. Augustine played a prominent role. Nevertheless, these ideas were not widely received in the East. Later on, the Gelasian and Augustinian theories begun to be studied and appreciated in the scholastic milieu, where the new model of the relationship between the secular and papal power was developing.

**Keywords:** secular and ecclesiastical power, Church and the Roman Empire, papal primacy in the Antiquity, caesaropapism.

**Słowa kluczowe:** władza świecka a władza kościelna, Kościół a Cesarstwo Rzymskie, prymat papieski w starożytności, ceszaropapizm.

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## I. The concept of caesaropapism

The concept of caesaropapism has been a staple of historical scholarship. However, its use may not always be appropriate. In particular it may be asked whether its use does more to distort than to illuminate the relations between the Late Roman Empire and the Catholic Church. This article is going to address those questions.<sup>1</sup>

The term was coined in the early 18<sup>th</sup> century by Justus Henning Böhmer in his treatise on Protestant church law. Böhmer makes a distinction between two kinds of “old, corrupt human habits” that are said to be “harmful for a just society”.<sup>2</sup> They are *papo-caesaria*, political systems where the church makes secular laws, and *caesaro-papia*, where the secular ruler regulates by law matters that belong to the jurisdiction of the Church.<sup>3</sup> Böhmer points to Book One of the Justinian Code as an example of the latter type of legislative practice. Although historians paid little attention to Böhmer’s distinctions, they were sufficiently impressed by the idea of *caesaropapism* to adopt it as a tool in their descriptions of the constitution of the Byzantine Empire. The portmanteau

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<sup>1</sup> The literature on this subject is vast; this list includes some of the most notable contributions in chronological order: P. Hinschius, *Esposizione generale delle relazioni tra lo Stato e Chiesa*, Torino 1892; B. Biondi, *Giustiniano primo principe e legislatore cattolico*, Milano 1936; J. Lo Grasso, *Ecclesia et Status* (Fontes Selectae), Roma 1939; H. Berkhof, *Kirche und Kaiser. Eine Untersuchung der Entstehung der byzantinischen und der theokratischen Staatsauffassung im vierten Jahrhundert*, Zürich 1947; N.H. Baynes, *An introduction to East Roman Civilization*, Oxford 1948; L. Brehier, *Le Monde Byzantin*, vol. 1: *Vie et mort de Byzance*, Paris 1947; vol. 2: *Les Institutions de L'Empire Byzantin*, Paris 1948; vol. 3: *Le civilization byzantine*, Paris 1950; E. Stein, *Histoire du Bas-Empire* (2 vols.), Paris 1949–1959; A.R. Carranza, *El Triunfo del cristianismo: Estudios históricos*, Buenos Aires 1950; B. Biondi, *Il diritto romano cristiano*, vol. 1, Milano 1952; A.W. Ziegler, *Die byzantinische Religionspolitik und der sog. Caesaropapismus* [in:] *Münchener Beiträge zur Slavenkunde. Festgabe für Paul Diels*, München 1953, p. 81–97; K. Aland, *Kaiser und Kirche von Konstanz bis Byzanz*, Berlin 1957; G. Ostrogorski, *History of the Byzantine State*, New Brunswick, N.J. 1957; J. Straub, *Kaiser Konstantin als episkopos ton ektos*, “*Studia Patristica*” 1957, No. 1, p. 678–695; S. Tyszkiewicz, K. Liesner, *Die Einheit der Kirche und Byzanz*, Würzburg 1962; A.H.M. Jones, *The Later Roman Empire 284–602: A Social, Economic and Administrative survey* (3 vols.), Oxford 1964; F. Dvornik, *Early Christian and Byzantine Political Philosophy*, Washington 1966; R. Farin, *L'Imperio e l'Imperatore cristiano in Eusebio di Cesarea. La Prima teologia politica del cristianesimo*, Zürich 1966; J. Straub, *Constantine as koinos episkopos*, “*Dunbarton Oaks Papers*” 1967, vol. 21, p. 37–55; R. Lorenz, *Das Vierte bis sechste Jahrhundert* [in:] K.D. Schmidt, E. Wolf (eds.), *Die Kirche in ihrer Geschichte*, Göttingen 1970; J.M. Sansterre, *Eusebe de Cesaree et la naissance de la theorie “cesaropapiste”*, “*Byzantion*” 1972, vol. 42, p. 131–195, 532–594; H. Ahrweiler, *L'Ideologie politique de l'empire byzantin*, Paris 1975; C. Andresen, *Geschichte des Christentums: Von den Anfängen bis zur Hochscholastik*, vol. 1, Stuttgart–Berlin–Köln–Mainz 1975; H.V. Schubert, *Geschichte der christlichen Kirche im Frühmittelalter*, Darmstadt 1976; H.G. Beck, *Das Byzantinische Jahrtausend*, München 1978; H.G. Beck, *Geschichte der orthodoxen Kirche im byzantinischen Reich*, Göttingen 1980; T.D. Barnes, *Constantine and Eusebius*, Cambridge, Mass. 1981; G.W. Bowersock, *From Emperor to Bishop: The Self-Conscious Transformation of Political Power in the Fourth Century A.D.*, “*Classical Philology*” 1986, vol. 81, p. 298–307; J. Herrin, *The Formation of Christendom*, Princeton 1987; R. Delmaire et al., *Les lois religieuses des empereurs romains*, vol. 1–2, Paris 2005–2009; J.M. Hussey, *The Orthodox Church in the Byzantine Empire*, Oxford 2010; J. Bardill, *Constantine, Divine Emperor of the Christian Golden Age*, Cambridge, New York 2011.

<sup>2</sup> J.H. Böhmer, *Ius ecclesiasticum protestantium: Usus hodiernum iuris canonici iuxta seriem Decretalium ostendens et ipsis rerum argumentis illustrans*, Halae Magdeburgicae (5 vols), 1756–1789, vol. 1, p. 10–11 (“*Dissertatio Praeliminaris*”, par. XV).

<sup>3</sup> K. Pennington, *Caesaropapism* [in:] *The New Catholic Encyclopedia: Supplement 2010* (2 vols), Detroit 2010, vol. 1, p. 183–185.

word was apparently uniquely suited to convey the idea of the Emperor's sovereign authority, secular and ecclesiastical. However, this is not how Böhmer understood this term. For him *caesaropapism* implies neither the ruler's arbitrary powers in religious matters nor is it tied in any special way to Byzantium.<sup>4</sup> In his argument the Code of Justinian exemplifies a type of relationship in which the secular ruler is entitled to participate in the administration of the church (on the grounds that the church does function in the temporal world).<sup>5</sup> In a recent study Piotr Michalik defined caesaropapism as a political system in which either both political and religious authority is combined in the person of the ruler, or the ruler has a dominant position in both domains.<sup>6</sup> This definition would most probably suit some Protestant states in the Early Modern period, but is not too adequate to describe the realities of the Post-Constantine Roman Empire.

The claim that the Church accepted a form of absolute rule by the Emperor is hard to square with the Church's repugnance to arbitrary exercise of power by its bishops. Crucially, the term "autocracy" was not equivalent to despotism. If an emperor was not able to balance the interests of some influential notables and coteries, his power would not last long.<sup>7</sup>

Even though the emperor was generally believed to be a "type" of King David, an anointed prophet-king, and like David a monarch by God's will, God could, by the same token, withdraw His backing and point out a new leader. At any rate the role of the prophet-king was not tantamount to a licence for despotic rule. The evidence to the contrary is based on the florid rhetoric of some texts, which suggest that the Church is ready to allow the Emperor unlimited powers. However, at a closer look we find beyond the grandiloquence a sober affirmation of natural justice and good governance. We are reminded that the monarch remains under God's supervision and acts properly as a "type" (icon) of the reigning Christ. If the emperor were to break away from the 'Divine constitution' – the Gospels and the canons – the Church's sanction would be removed.<sup>8</sup> Furthermore, we must not mistake the symbols, rites and rhetoric for the complex realities behind them. The Orthodox Church never regarded the temporal ruler as a "Leviathan", a figure governing everything and sitting in judgment on all around him. The divine order of creation has no room for an absolute sovereign of this kind if only because of man's innate freedom, the Creator's inalienable gift to all human beings. The Church protects the freedom of the Christians by founding its governance and functioning on the decisions of councils, synods and canon law.<sup>9</sup>

Although the exercise of power was always enveloped in all kinds of precepts and expectations, the Byzantines did not develop a uniform political theory. The reasons for this are twofold. First, the chief sources of canon law, i.e. the Bible and the canons, do not embody a single, consistent account of the relationship between the Kingdom of God

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<sup>4</sup> *Ibidem*.

<sup>5</sup> *Ibidem*.

<sup>6</sup> P. Michalik, *Kilka uwag na temat cesaropapizmu w Cesarstwie Wschodniorzymskim i Bizantyńskim* [A Note on the Subject of Caesaropapism in the Eastern Roman and Byzantine Empire] [in:] *Cuius regio eius religio?*, eds. G. Górski *et al.*, Lublin 2006, p. 83–90.

<sup>7</sup> Cf. J.A. McGuckin, *The Orthodox Church: An Introduction to its History, Doctrine and Spiritual Culture*, Blackwell, Oxford 2008, p. 381–383.

<sup>8</sup> Cf. *ibidem*.

<sup>9</sup> *Ibidem*.

and the kingdoms of this world. Neither do they suggest that any single model of that relationship is superior or merely acceptable unlike the rest. Second, Byzantine political theorists seem to have had a preference for the matter in hand and solutions that were *ad hoc*.<sup>10</sup>

Christ's words on the subject of government open up two different perspectives. While He accepts the institutions of government as a model (His mission is to proclaim the Kingdom of God, the Kingdom of Heaven or the Kingdom of the Son of Man; He proclaims Himself king), He also makes clear the incompatibility of His Kingdom with the kingdoms of this world ("Give back to Caesar what is Caesar's..."; Herod Antipas called "a fox"; "My kingdom is not of this world..."; Pilate is said to have as much power as was given to him "from above").<sup>11</sup> Consequently, the vision of the Kingdom of God was not necessarily reflected in any worldly reign, even of a godly monarch. When the age of persecution came to an end St Paul's dictum about submission to the powers that be was interpreted not as an order, urging the faithful to serve the state with unconditional obedience, but rather as a reminder of what good government should look like. As the Apostle wrote these words when Rome was ruled by Nero, he could not have meant a concrete ruler but the institution of government itself.<sup>12</sup>

It seems that there is a contradiction between the words of Christ in Mt 22:21 (no mention of divine sanction for earthly rule) and the words of St Paul in Rom 13:1 ("the powers that be are ordained of God"). One way of ironing out the discrepancy is to interpret the latter quotation as a general statement, which does not refer to any particular ruler, but to the institution of government, i.e. an authority that is legitimate. At the same time it should be noted that neither the condemnation of the "kings of the earth" in Rev 17:1–18:24 nor the appeal to reject "the things of the world" in 1 Jn 2:15 carries an outright repudiation of political institutions *per se*. The things that are repudiated are specific and concrete. The difficulty posed by the metaphor of "two roads" in *Didache* is resolved when it is understood in its proper, moral sense. Certainly the antithesis cannot be treated as an acid test of institutions of government if only because no political system is immune to the vices that *Didache* condemns. According to Aristotle Papanikolaou the utterances of St Paul, the Book of Revelation and *Didache* represent three distinct early-Christian views of the state, i.e. that it is a mere necessity, that it is sanctioned by God, or that it is something of a God's curse.<sup>13</sup> In my opinion, this highly contrastive differentiation is misleading because it does not take into account the distinction between the institution of government and the individuals in the top positions of power.

A shift in the Christian attitude towards the Roman Empire was triggered by the 'human factor', i.e. Constantine's conversion, the end of persecutions, and promises of state support – both material and legal – for the Church. While the effects of the official turnabout were hard to overestimate, it did not bring about a change of doctrine.<sup>14</sup> Papanikolaou is right saying that the new policies favouring Christianity and its legal

<sup>10</sup> *Ibidem*, p. 384.

<sup>11</sup> Mt 22:21, Lk 13:32, and Jn 18:36.

<sup>12</sup> Cf. С. Булгаков, Православие. Очерки учения православной церкви, Paris 1989, p. 331–344.

<sup>13</sup> A. Papanikolaou, *Byzantium, Orthodoxy, and Democracy*, "Journal of the American Academy of Religion" 2003, vol. 71, issue 1, p. 80–81.

<sup>14</sup> Cf. *ibidem*, p. 81 ff.

recognition as state religion made it necessary for the Christian political theology to look for new solutions, and in particular to position itself towards an emperor with a genuine commitment to the Christian faith.<sup>15</sup> Mainstream Christians, who were not prone to sectarianism and pious otherworldliness, could not but respond to this challenge. Nor could the Church, which, after all, functioned in this world, among real people, and whose founder was God “made flesh”. Yet, at the same time, the Church could not ignore Christ’s declaration that ‘my kingdom is not of this world’. In the light of that unequivocal statement any attempt at identifying the reformed Roman Empire with the Kingdom of God had to be found unacceptable and invalid. The solution was a rapprochement within limits: in maintaining a safe distance the Church could rely on its traditions of asceticism and monasticism as well as the apocalyptic doctrine of Christ’s reign. The emperor could be a ‘type’ of divine authority on earth and his rule might have the sanction of the Church, yet circumscribed by the Divine Law, absolute and unshakable, and the canons, which constitute some kind of supreme law. If the ruler broke these higher laws his legitimacy was undermined.

Consequently, these two axioms – that the βασιλεύς was subject to God’s law and the canons and that any kingdom on this earth could not be identified with the Kingdom of God – made Byzantium a thoroughly inhospitable place for the Hellenistic doctrines of the deification of the state ruler.<sup>16</sup> The bishops could not but distance themselves from the idea the monarch as νόμος ἔμπροσθεν, or the idea of the emperor as a *fons et origo* of the laws. Such doctrines were incompatible with Christian faith.

## II. Was the emperor regarded as *Pontifex maximus* of the Church?

The Roman Revolution of Constantine gave rise to the idea of an ‘emperor’s charisma’, or a vision of the emperor as ‘husband’, here on earth, of his Church the Bride. The emperor also took up the mantle of the representative of the lay faithful – the new chosen people and royal priesthood – ‘the first servant’ of the Church.<sup>17</sup> But does it mean that he assumed a rank similar to that of *pontifex maximus*, or that he became equal to a bishop?

Eusebius of Caesarea quotes Constantine’s self-styled title ἐπίσκοπος τῶν ἐκτός,<sup>18</sup> that is a “bishop”, or “overseer of those outside [the Church]”. Constantine’s words mean that he considered himself an *episkopos* in the latter sense, i.e. an overseer of those who have not yet come to Christ or have strayed into heresy. The choice of words underlies

<sup>15</sup> *Ibidem*, p. 81–82.

<sup>16</sup> J.A. McGuckin, *The Orthodox Church*, p. 385–386.

<sup>17</sup> Cf. C. Булгаков, Православие, p. 331–344.

<sup>18</sup> *Vita Const.* IV.24, ed. F. Winkelmann, Berlin 1975. Cf. also e.g. R. Schilling, *Apropos du Pontifex Maximus. Dans quelle mesure peut-on parler d’un emploi par les chrétiens d’un titre prestigieux de la Rome antique?* [in:] *Diritto e religione da Romae Constantinopoli e Mosca. Da Roma alle Terza Roma. XI Seminario internazionale di studi storici, Roma 21–22 avril 1991*, Roma 1994, p. 75–90.

the emperor's duty to bring "those outside" to the Church rather than his claim to the sacrament of holy orders.<sup>19</sup>

It has been claimed that Eusebius's allegedly "caesoropapist" view of Constantine's self-definition of the role of the emperor was influenced by Arian Christology, in particular the doctrine of subordinationism. If, as the Arians assert the Son is subordinate to God the Father, then, by analogy, the emperor can be regarded as a kind of hero or semi-divine figure who by virtue of God's special grace ranks higher than the clergy.<sup>20</sup> While both parties debating the relationship between God the Father and the Son believed Christ to be the Head of the Church, their doctrinal differences ran deep. The Catholics, holding on to belief in Christ's full divinity, rejected any suggestion of the emperor's illicit interference with the Church (the Body of Christ). For them Christ the Logos is equal to the Father by nature and remains King of kings and true protector of the Holy Church. The Arians admitted that Christ was the head of the community of the faithful, but the rejection of Christ's full divinity led them to the subordinationist view of God the Father as the Head, or superior to Christ. By the same token, they argued, the emperor, ruler by the grace of God, must be seen as superior to the bishops, whose office came from the Son. The Arians were thus the true supporters of caesaropapism: they regarded the emperor as God's 'envoy' and head of the Church, founded by the Son.<sup>21</sup> Whereas the Arians saw the Empire as a temporal representation, an icon, of God the Father's Kingdom of Heaven, the Catholics believed that the Kingdom of God and the Kingdom of Christ were one and the same, and the Eternal Kingdom of God existed in the Church.<sup>22</sup>

The opponents of Nicea were more sympathetic to the idea of an absolute monarch, acting as God's supreme envoy on earth. Not so orthodox Christians, whose concept of royal authority was rooted in their orthodox understanding of the Trinity. For them the emperor's conduct was not exempt from judgment based on the principles upheld by the Church with bishops (as priests *cum* prophets) acting as legitimate judges. The emperor could not be regarded as νόμος ἔμψυχος – *lex animata* and *fons omnis iuris* for the Church.<sup>23</sup> And even if he were to be treated as a kind of semi-divine hero and given a place above the ecclesiastical hierarchy, that does not make him a priest.

<sup>19</sup> Cf. J. Straub, *Kaiser Konstantin als episkopos ton ektos*, p. 678–695; G. Dagron, *Emperor and Priest: the imperial office in Byzantium*, Cambridge–New York 2003, p. 133–134 notes that after a closer look at Eusebius' Greek, i.e. his use of the subjunctive and the phrase "he might be perhaps", it becomes clear that he treats the substance of Constantine's claim as no more than a wish. Dagron also notes Eusebius' deft handling of the verb ἐπισκοπεῖν 'to oversee' and the noun ἐπίσκοπος. The purpose of the contrastive use of these two words is to avoid any endorsement of the claim that the emperor had a priestly status; or, in other words, with reference to Constantine Eusebius brings back the more comprehensive, secular meanings of the word ἐπίσκοπος, i.e. an overseer; somebody who looks after, or takes care of something.

<sup>20</sup> Cf. the assessments of Eric Peterson and other scholars, esp. Fustel de Coulanges and Luigi Sturzo. G. Dagron, *Vostochnij cezaropapizm* [in:] *Gennadios, k 70-letiju akademika G. G. Litavrina (Melanges G. G. Litavrin)*, Moscow 1999, p. 80–99; [Russian translation] [http://www.krotov.info/libr\\_min/05\\_d/dag/ron\\_01.htm](http://www.krotov.info/libr_min/05_d/dag/ron_01.htm) [accessed 10 January 2013]; idem, *L'Empire romain d'Orient au IVe siecle et les traditions politiques de l'hellenisme. Le temoignage de Themistios* [in:] *Travaux et Memoires du Centre d'Histoire et Civilisation de Byzance*, vol. 3, Paris 1968; idem, *Orient-Occident: cesaropapisme et theorie des deux pouvoirs face a la modernite*, "Revue d'ethique et de theologie morale" 2003, Decembre, vol. 227, p. 143–157.

<sup>21</sup> G.H. Williams, *Christology and Church-State Relations in the Fourth Century*, "Church History" 1951, December, vol. 20, issue 4, p. 3–26, esp. p. 15.

<sup>22</sup> *Ibidem*, p. 15.

<sup>23</sup> *Ibidem*, p. 15–16.



Finally, we need to examine the case of Gregory of Nazianzus, a leading Nicean who allegedly still clung to a Hellenistic (pagan) vision of the emperor.<sup>24</sup> Francis Dvornik, who made this claim, seems to misinterpret his key quote, Gregory's appeal to Emperor Theodosius to be "like God" towards his subjects.<sup>25</sup> Gregory's phrase does not echo Aristotle; it draws on the Psalms and the biblical strain of denunciations of earthly kings seized by absolutist ambitions.<sup>26</sup> To make his meaning clear, he seals it with a reference to the Book of Proverbs (21:1):

Emperors take care of your purple. For my oration points to laws that *also* bind our legislators. Know how much has been entrusted to you and what a mystery that trust is. The whole world lies in your hands, even though your crown is small and your body is weak. What is above you belongs to God; what is below you belongs *also* to you. Be as gods to your subjects [Ps. 81:1, 6]. The king's heart is in the hand of God (Prov. 21:1). It is there your strength should lie, not in your gold or your armies.<sup>27</sup>

This key passage shows that Gregory unequivocally rejects the idea of the emperor as νόμος ξυμψυχος and buttresses it with a reminder that the emperor's majesty does not take away his human deficiencies. Moreover, the monarch's capability to represent God (on the principle of *mimesis*) and his God-given legitimacy are conditional. The image of God holding the king's heart indicates both divine protection and the possibility of it being withdrawn with fatal consequences. The king's power is sustained by God only in so far as he exercises it in the right way, that is he "defends the poor and the orphans, and gives justice to the poor and the needy" (Ps. 81:3–4).<sup>28</sup> Once it becomes clear that Dvornik misreads his patristic sources, his thesis about the Byzantine "betrayal" of early Christianity for absolutist Hellenistic ideas of kingship must be found untenable.<sup>29</sup> In fact, Byzantium had its own traditions which developed depending on the manner in which the emperor decided to position himself in periods of religious conflict with the monks, the ecclesiastical hierarchy or the people. These traditions, which represented an innovative and flexible adaptation of ancient theories of kingship to the framework of Christian orthodoxy, can be condensed to the following key formulas and postulates.<sup>30</sup>

## 1. The Christian emperor is accorded a limited priestly status

The perception of the emperor's office as priestly or quasi-priestly dignity originated with Ps 109 which describes the Messianic ruler as a priest, though not in the succession of Aaron but "after the order of Melchizedek". The Epistle to the Hebrews assigns the

<sup>24</sup> F. Dvornik, *Early Christian and Byzantine Political Philosophy*, vol. 2, Washington DC 1966, p. 686–689.

<sup>25</sup> So J.A. McGuckin, *The Orthodox Church*, p. 386. Cf. also M. Azkoul, *Sacerdotium et Imperium. The Constantinian Renovatio according to Greek Fathers*, "Theological Studies" 1971, vol. 52, p. 431–464.

<sup>26</sup> Cf. Ps. 81:6–7.

<sup>27</sup> *Oratio* 36.11, my translation – R.M.

<sup>28</sup> Cf. J.A. McGuckin, *The Orthodox Church*, p. 386–387.

<sup>29</sup> J.A. McGuckin, *The Legacy of the Thirteenth Apostle: Origins of the East-Christian Conceptions of Church-State Relation*, "St. Vladimir's Theological Quarterly" 2003, vol. 47, issue 3–4, p. 251–288.

<sup>30</sup> Cf. J.A. McGuckin, *The Orthodox Church*, p. 388–395.

dignity of the priest-king to Christ, but it was assumed that also the emperor in a way participated in that priesthood.<sup>31</sup> However, the distinction between the two roles, the imperial and the sacerdotal, was made absolutely clear by Maximus the Confessor. He denies that the emperor could be a “true” priest:

[the emperor] does not stand at the altar nor does he consecrate the bread. [...] Nor does he baptize, or anoint, or appoint and lay on hands to make bishops, priests and deacons; nor does he consecrate churches or wear the symbols of priesthood [...].<sup>32</sup>

Maximus insists that Melchizedek does not represent a foreshadowing of an Emperor-Priest,<sup>33</sup> but is a type of Christ himself.<sup>34</sup> Maximus also points out, drawing on the argument *lex orandi lex credendi*, that the liturgy makes a clear distinction between the clergy and the laity, headed by the emperor.

Both the prayers and liturgical ordinances leave no doubt about the place of the emperor in Church.<sup>35</sup> The emperor took communion with the clergy, however he did only after all of them had communicated. His position was that of a privileged layman. Like other layman he received the Prosthoma and the Chalice from the hand of the bishop. The order of the Holy Communion demonstrates the nature of the emperor's priesthood, which is κατ'οικονομίαν, i.e. not literal (sacramental). It gives him at the most the privilege of entering the sanctuary and approaching the altar together with the lesser orders (subdeacons).<sup>36</sup> Yet he has no right to perform any of the functions reserved for ordained priests, e.g. assist in the consecration of bread and wine.<sup>37</sup> It would be a misunderstanding to accord the emperor a priestly status on the basis of some rhetorical and legal formulas or his participation in some liturgical actions as for example the rite of censuring described in the *Book of Ceremonies of Constantine VII Porphyrogenetos*.<sup>38</sup> Presiding over such rituals may look like a privilege of the clergy, yet when the description is put in its historical context it turns out that the censuring of icons became popular with both monks and laymen after the restoration of iconodoulia in the 9<sup>th</sup> century.<sup>39</sup> This change did not erode the old divisions; it could still be accommodated within the distinction between sacraments (μυστήρια), or liturgical actions proper, and *sacramentalia*

<sup>31</sup> Heb 5:5–6; 6:20 etc. On Melchizedek cf. e.g. F.L. Horton, *The Melchizedek Tradition*, Cambridge 1976, and O. Michel, *Der Brief an die Hebräer*, Göttingen 1975 p. 257–258, 261–262; S. Łach, *List do Hebrajczyków. Wstęp, przekład z oryginału, komentarz, ekskursy* [Epistle to the Hebrews. Introduction, translation from the original, commentary and excurses], Poznań 1959, p. 349–356. On the Patristic interpretations of Melchizedek in relation to Christ cf. e.g. P. Paciorek, *Christ and Melchizedek both Fatherless and Motherless in the Christology of Augustine of Hippo* [in:] F. Young, M. Edwards, P. Parvis (eds.), *Studia Patristica*, vol. XLIII, Louvain 2006, p. 213–219.

<sup>32</sup> *Relatio Motionis*, 4, PG 90, col. 116–117, transl. from: G. Dagron, Ch. Hannick, A. Jacob, J. Kłoczowski et al., *Historia chrześcijaństwa* [History of Christianity], vol. 4, Warszawa 1999, p. 48.

<sup>33</sup> *Ibidem*.

<sup>34</sup> Cf. Gen 14:18; Heb 7:1,3.

<sup>35</sup> *Relatio Motionis*, col. 116–117.

<sup>36</sup> D.J. Geanakoplos, *Church and State in the Byzantine Empire: A Reconsideration of the Problem of Caesaropapism*, “Church History” 1965, December, vol. 34, No 4, p. 390.

<sup>37</sup> *Ibidem*, p. 381–403, esp. p. 391.

<sup>38</sup> J.A. McGuckin, *The Orthodox Church*, p. 389.

<sup>39</sup> On the emperor's liturgical privileges cf. L. Brehier, ἱερεὺς καὶ βασιλεὺς [in:] *Memorial L. Petit. Mélanges d'histoire et d'archéologie byzantines*. (Archives de l'Orient Chrétien), vol. 1, Bucarest 1948, p. 41–45.



(μυστήρια καὶ τελετές).<sup>40</sup> In the sphere of dogmas and sacraments the emperor's powers were virtually fenced out; the concessions were slight and justified by prudential, tactical considerations in the face of necessity.

There was, however, one sphere in which the emperor did enjoy a special, "priestly" role. It was that of a defender, protector and guardian of the true faith (ὀρθοδοξία). The bishops looked up to him for the defence of the Church and were ready to call him a priest, but only with regard to that function. The acclamations "To the Priest, the Emperor" of the Council of Chalcedon (Session VI) addressed to Emperor Marcian appear in a military context; Pope Leo the Great in his letters to Emperors Marcian and Leo I acknowledges their special role in defending the Church "with the devotedness of a priestly mind".<sup>41</sup> Socrates of Constantinople lauds Theodosius II as "the most gentle" of all men on earth, an emperor whose piety was equal to that of the monks.<sup>42</sup> However, the 'priestly' attributes refer as a rule to the emperor's moral character. Phrases like "a priestly soul", or "a priestly character" are admissible as an expression of highest respect, but even at the height of their adulation the Byzantine writers know where to draw the line: they never call the emperor a priest *sensu stricto*.<sup>43</sup>

The emperor's priesthood was described as κατ'οικονομίαν. From the perspective of Eastern church law it is an important qualification. The principle of οἰκονομία ("economy" is used here in the sense "discretion" or "latitude") allows a more flexible adaptation of the Canons as long as the fundamental tenets of the faith are not compromised. The issue of the application of this principle to the office of the emperor goes back to Constantine's persistent claim to the traditional role of *Pontifex maximus*. The manner in which this contention was accepted by the Byzantine tradition shows a certain compromise. The priestly prerogative was denied in substance while affirming them discretionally for some of his roles (principally that of a defender).

Although the emperor was described as defender of the faith and acted as a party in theological disputes, he was never credited with the authority of a priest. Bishop Hosius of Cordoba's famous letter of reproof to Constantine II for meddling in τα ἐκκλησιαστικά deals in fact with the Magisterium (which is not exactly synonymous with the Church's internal affairs).<sup>44</sup> As a Christian the emperor had the right to join theological debates,

<sup>40</sup> Cf. D.J. Geanakoplos, *Church and State*, p. 390, 392.

<sup>41</sup> *Letter 162: To Emperor Leo* [in:] *The Fathers of the Church*, vol. 34 (*Letters*), New York 1957, p. 252. Pope Leo himself writes to Emperor Marcian in 453 "you hold a royal crown and the priestly palm" (*regia corona, sacerdotalis palma*), a statement which must be seen in the context of his efforts to enlist Marcian's support for Rome's position at the Council of Chalcedon (cf. Mansi, vol. 6, col. 219, Ep. 111.3). In a letter to Bishop Julian of Cos he affirms that the pious vigilance of the Emperor and the Empress was a sign 'that all men may acknowledge [that] their superiority rests not only on their royal state but also on their priestly holiness (*sacerdotalis sanctitas*)' (Mansi, Vol. 6, Col. 235, Ep. 117.2). In a direct appeal to Emperor Leo I the Pope urges him to act decisively against heretics 'for your Majesty's priestly and Apostolic mind ought to be still further kindled to righteous vengeance' and because 'you ought unhesitatingly to consider that the kingly power has been conferred on you not for the governance of the world alone but more especially for the guardianship of the Church' (Mansi, Vol. 6, Col. 325, Ep. 156.3).

<sup>42</sup> Socrates of Constantinople, *Historia Ecclesiastica*, 7.42.

<sup>43</sup> J.A. McGuckin, *The Orthodox Church*, p. 389–390.

<sup>44</sup> "Do not intrude into ecclesiastical affairs, nor give us orders concerning them, but rather learn from us about them. God has put the empire into your hands, He entrusted the affairs of the Church to us... Therefore neither are we permitted to rule over earthly things nor do you have the right to burn incense in worship"

and, what was as important from a practical perspective, he had the legal tools and resources that the church administration could hardly do without. Furthermore, the emperor was able to rely on the advice of his own well-educated lay officials, who continued to be employed by the imperial court.<sup>45</sup> With their knowledge they were uniquely qualified to act as experts on ecclesiastical affairs.<sup>46</sup>

## 2. The office of emperor has the apostolic charism and apostleship defines the emperor's mission and duty

Constantine's burial in the Church of the Holy Apostles in a tomb encircled by twelve sarcophagi symbolizing the apostles gave rise to the interpretation that the emperor envisaged himself to be equal to the apostles (ισαπόστολος). However, that term could mean no more than a honorific status of "the Thirteenth Apostle". The affirmation of the apostolic charism of the emperor soon gained acceptance in the Greek Church, but the distinction was applied primarily to Constantine. His successors, who claimed to be his spiritual heirs, also wished to be buried in Constantine's mausoleum. It is possible that such instructions concerning burial expressed their aspiration to a sacerdotal status, but that claim was by no means confirmed by the design of the church when it was completed and rebuilt. There the tombs of the emperors could be found in an annex (vestibule), outside the main building. St John Chrysostom does not mince words when he describes the symbolic value of that arrangement:

Those who wear the diadem in Constantinople, consider it a great thing to be buried in the vestibule, not adjacent to the apostles. It is a matter of honour for the emperors thus to be the doorkeepers of the fishermen. It is their glory in death, not a source of shame, and a glory they wish for their children too.<sup>47</sup>

Clearly, for Chrysostom emperors could aspire to no more than the role of servants to the ministers of the Gospel. Sometimes Chrysostom's words are contrasted with those of Sozomen the historian who is quoted as saying that emperors had been the equals of bishops in the church hierarchy: "Bishops were also buried there [in the Church of the Holy Apostles] since the priestly dignity is of the same honour as the imperial dignity;

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(Hosius of Cordoba, *Letter to Emperor Constantius II* [in:] Athanasius, *Historia arianorum ad monachos*, PG 23, col. 691–796). Cf. H. Rahner, *Kirche und Staat im frühen Christentum*, München 1961 [Polish transl. *Kościół i państwo we wczesnym chrześcijaństwie*, Warszawa 1986], p. 92–93.

<sup>45</sup> In the West the word *laicus* was a synonym of an illiterate person. Cf. Y. Congar, *Etudes conjointes pour une Theologie Laicat*. At the same time "a Greek" suggested its opposite, an educated person. Cf. E. Goldmann, *Graecus = Gebildet* [in:] *Melanges Emile Boisacq*, Brussels 1937, p. 399–409. On schools in the Eastern Roman Empire cf. H.I. Marrou, *History of Education in Antiquity*, New York 1956, p. 340; L. Brehier, *Le monde byzantine*, vol. 3: *La Civilization byzantine*, Paris 1950, p. 420f and p. 456f; R. Guillaud, *La vie scolaire à Byzance*, "Bulletin de l'Association Guillaume Budé" 1953, vol. 1, p. 63–83.

<sup>46</sup> Cf. Y. Congar, *After Nine Hundred Years: The Background of the Schism Between the Eastern and Western Churches*, New York 1959, p. 32.

<sup>47</sup> John Chrysostom, *Contra Iudaeos et gentiles* 9, PG 48.813–838 and *In Epist. II ad Corinthios* Hom. 26.10, PG 61.582.

or rather in holy places it takes precedence”.<sup>48</sup> This is obviously wrong.<sup>49</sup> None of the bishops of Constantinople was ever buried at a site reserved for emperors. What may possibly have misled Sozomen into making that generalization was the translation of the relics of John Chrysostom to the Church of the Holy Apostles in 438 by Theodosius II.<sup>50</sup>

### 3. Church and state act in accord (*symphonia*)

The idea of *συμφωνία* (*consonantia*) postulated an equipoise between secular politics and the principles of the Kingdom of God, a harmonious co-operation between imperial authority and the Church. *Symphonia* was an ideal, an aspiration, rather than a political theory. It was outlined by Gregory of Nyssa, whose model was the Biblical idea of God’s special protection of the People of the Covenant. Its essence is expressed by this rule: if the emperor follows the will of God and the people keep their faith then God will bless and protect their kingdom like He did the Israel of old. When observed, this godly precept produces a *symphonia* of heaven and earth, and affords the empire protection against all kinds of enemies.<sup>51</sup> John Chrysostom defines *συμφωνία* in terms of a sharp distinction between the proper spheres of the Church and the state, which, nonetheless remain indivisible. Their union (*συνυγία*) is as close as that of body and soul, distinguishable in the mind, but inseparable in the real world. John Chrysostom also illustrates his point by the example of King Ozias who was stricken with leprosy for usurping the priestly function of burning incense in the Temple.<sup>52</sup> Chrysostom delineates the two domains at greater length in his Oration to the People of Antioch

Therefore, stay within your proper domain. The empire and the priesthood each have their own boundaries, even though the priesthood is the greater of the two. A king should not be judged merely on the appearance, or valued merely from the gold and jewels in his costume. His domain is the administration of earthly affairs, whereas the jurisdiction of the priesthood is a power derived from above (...) Bodies are under the care of the King, souls under the care of the priest. The king remits earthly debts, the priest remits the debts of guilt (...) One uses earthly weapons, the other uses spiritual weapons, and it is the latter which bears greater power. This is why the King bends his head to the hand of the priest, and why, in the Old Testament, kings were always anointed by priests.<sup>53</sup>

A concrete example of the functioning of the principle of *symphonia*– and demonstrating the absence of caesaropapism – is Emperor Theodosius II’s involvement in the preparations for the Council of Ephesus. His assurances that the council would have a genuinely ecumenical character, i.e. all parties would have a fair representation, in the end swayed the four Patriarchs who had planned summoning regional synods of their own. It was then that the procedure of convoking a council and ratifying its documents by the emperor was established: the assembly was held under his auspices, but he took

<sup>48</sup> Sozomen, *Historia Ecclesiastica*, 2.34.

<sup>49</sup> J.A. McGuckin, *The Orthodox Church*, p. 390.

<sup>50</sup> Sozomen, *Historia Ecclesiastica*, 5.36; J. A. McGuckin, *The Orthodox Church*, p. 390.

<sup>51</sup> Gregory of Nyssa, *Oratio funebris de Placilla Imperatrice*, PG 46.877–893.

<sup>52</sup> 2 Chron. 26:16–18: Chrysostom, *Hom. 4 On Ozias “Vidi Dominum”*, PG 56.126 and *Hom. 21 Eclogue on Imperial Rule*.

<sup>53</sup> Chrysostom, *Hom. 3 To the Antiochenes*, quot. from J. A. McGuckin, *The Orthodox Church*, p. 389.

no part in the formulation of the decrees. Theodosius II affirmed this combination of patronage and non-interference in his *sacra*, or Letter of Convocation, read out at the opening of the Council at Ephesus in June 431:

The stability of the state depends on the religion through which we honour God. The two are closely linked, as each depends on the other and thrives as each other flourishes. Since God has handed us the reins of government, and made us the link of piety and righteousness for all our subjects, we shall preserve the association between the two and watch over the interests of both God and men.<sup>54</sup>

Justinian reaffirmed Theodosius' declaration in his Letter of Convocation, issued in connection with Second Council of Constantinople in 553.<sup>55</sup> And, in the Preface to his 6th *Novel* (535), Justinian presented his own description of the relationship between *imperium* (βασίλειά) and *sacerdotium* (ιερωσύνη). It has often been cited as a proof of his reversion to the Hellenistic idea of divine kingship or a caesaropapist manifesto. In fact, as J.A. McGuckin argues convincingly, in these texts Justinian neither says anything new nor does he develop a more robust political theology.<sup>56</sup> It is a Biblical allusion to Psalm 131, especially verses 8 to 12, which can be treated as a source of the Christian idea of *symphonia*. It can be summarized as follows: The King receives God's blessings and ensures the holiness of the priests who in turn pray for the welfare of his Kingdom and the continuity of the royal line; this will work, but only as long as his sons keep the covenant and observe God's law. The Preface to Novel VI is nothing more than a commitment to this vision of harmonious co-operation between State and Church, not excepting the proviso that God's blessings for the monarchy depend on the royals keeping their part of the Covenant.

No doubt Justinian found the Biblical idea of *symphonia* useful in justifying his claim to supervise the Church's doctrine. However, it is important to note that the remit he stakes out for himself has clear bounds. It is to ensure a harmony whose existence depends on the observance of the canons handed down by the apostles and 'preserved and interpreted by the holy fathers'. Finally, even if the emperor were to become a paragon of piety that could do no wrong, the faithful were continually warned by the same Book of Psalms to "put no trust in princes, nor in the leaders of the people".<sup>57</sup>

John Meyendorff argues that the general harmony (συμφωνία τις ἀγαθή) mentioned in the Preface to *Nov. 6* refers to a union in which the two realms are fused into a single human society with two hierarchies, each of them given by God.<sup>58</sup> He admits that 'theoretically, a duality is preserved between the *imperium* and the *sacerdotium*', but as the latter (the priesthood) has "almost no legal expression" it is left to the emperor's law to govern the entirety of human *politeia*.<sup>59</sup> Traditions of the church and decisions of the councils are made into law by imperial decree; without the emperor's endorsement they

<sup>54</sup> Foll. J.A. McGuckin, *St. Cyril of Alexandria and the Christological Controversy: Its History, Theology and Texts*, Leiden 1994, p. 49.

<sup>55</sup> PG 86. 1035; although Justinian's reign is formally outside the scope of this study, I think his statements reflect doctrines and opinions which were held at the imperial court in his time and earlier.

<sup>56</sup> J.A. McGuckin, *The Orthodox Church*, p. 393–394.

<sup>57</sup> Ps. 118:9 and 146:3; J.A. McGuckin, *The Orthodox Church*, p. 393–394.

<sup>58</sup> J. Meyendorff, *Justinian: The Empire and the Church*, "Dumbarton Oaks Papers" 1968, vol. 22, p. 49. Cf. also A. Schmemmann, *The Historical Road of Eastern Orthodoxy*, New York 1963, p. 144–153.

<sup>59</sup> J. Meyendorff, *Justinian: The Empire and the Church*, p. 49.

are not binding and have no legal force.<sup>60</sup> The scope of the emperor's legal powers were, it would appear, sufficient to establish a "caesaropapist" supremacy, and yet Meyendorff rejects that conclusion. The main reason for it never coming to fruition was a breach between the legal edifice of the empire with its autocratic head and the core of the Christian religion. The dogmatic core was simply immune to the external legislation; the most the emperor could do was to control various aspects of the church administration from appointments to property management. Doctrinal statements encased in secular legislation were treated as reaffirmations of religious belief, perhaps necessary in the given circumstances, but not on a par with the old certainties of the faith. The latter were fixed, and came from the Church, not the emperors.<sup>61</sup> Gratian's *Rescript*, preserved in the Acts of the Council of Aquileia, strikes the same note in saying "a quibus [i.e. bishops] proficiscuntur instituta doctrinae ab iisdem discordis eruditionis repugnantia solverentur".<sup>62</sup> Indeed, the right of the emperor to judge and to make laws was never questioned in church councils, court rulings or acclamations of all sorts. At the same time, though, theologians in their discussions of points of doctrine did not find the imperial laws relevant and practically never referred to them.<sup>63</sup>

A significant modification of the idea of *symphonia* can be found in the writings of Pope Gelasius.<sup>64</sup> He insists on a clear dividing line between religion and politics – a "Gelasian" separation of the two that would ultimately result in a model Christian society where laymen do not meddle with the Church and the state leaves all ecclesiastical affairs to the clergy. It is a marked departure from Justinian's *symphonia*, which is premised on the belief that priesthood and political authority do not differ greatly nor are sacred things very different from those of public and common interest (*Nov. 7.2.1*).

The shift of perspective, introduced by a Pope who spoke proudly of his Roman descent ("Romanus natus sum"), may have had something to do with the way the question of power always preoccupied the Roman mind. In a letter to Emperor Anastasius Gelasius distinguishes between two kinds of power, (*regalis*) *potestas* and (*sacrata*) *auctoritas*. Only those who hold effective power (*potestas*) are able to implement laws. However, in the case of laws that affect the sphere of religion the power holders must follow the directions of those with the necessary *auctoritas*, i.e. the bishops. The bishops could thus claim *potestas* in the domain of canon law and internal affairs of the church, while in matters of public interest they would declare full obedience to the emperor's law.<sup>65</sup> However, as the Church brought more and more of the public sphere into its orbit (if only by invoking 'the power of binding and loosing'), the emperor's independence was harder to maintain. So, paradoxically, the sovereign ruler of the temporal world would become 'an executive organ' of the universal Church.<sup>66</sup>

<sup>60</sup> *Ibidem*.

<sup>61</sup> *Ibidem*, p. 50–51.

<sup>62</sup> Acta 3. In: N.B. McLynn, *Ambrose of Milan: Church and Court in a Christian Capital*, Berkeley 1994, p. 130, Note 190.

<sup>63</sup> J. Meyendorff, *Justinian: The Empire and the Church*, p. 51.

<sup>64</sup> J.A. McGuckin, *The Orthodox Church*, p. 394.

<sup>65</sup> *Ibidem*, p. 394–395. Cf. also *idem*, *St. Cyril of Alexandria*, p. 51–54.

<sup>66</sup> J. Ratzinger, *Church, Ecumenism and Politics*, San Francisco 2008, p. 95.

As the chief concern of the emperors was to preserve the unity of the realm, they were not averse to church institutions like the conciliar assembly, a forum designed to settle disputes and eliminate dissent from the church. Francis Dvornik is right in emphasizing the political importance of ecumenical councils.<sup>67</sup> The emperor expected that they would offer definitions of the faith shared by the entire ecclesiastical hierarchy so that when they would be made into imperial law they would guarantee the religious unity within the state.

### III. The imperial *leges* – a sign of the domination of *imperium* over the Church or *symphonia* in practice?

In the 4th–5th century emperors promulgated a series of laws concerning religion.<sup>68</sup> They included: a) laws introduced to promote, protect or consolidate the Christian faith; b) regulations concerning the status of non-Christians; c) laws addressing issues of ecclesiastical administration and the Church's social functions.<sup>69</sup> As a rule the legislation of that period was not tied to any dogmatic concerns. The emperors, intent on staying the orthodox course, merely tried to react to developments that threatened public order and political stability. Very often the tensions and unrest were fuelled by religious controversy.<sup>70</sup> These considerations should be kept in mind when we assess for example the policies of Gratian who, after issuing severe laws against the Donatists in A.D. 376, decided that it was better to relent and produced a rescript in which he offered them his protection.<sup>71</sup> This leniency angered the bishops who came to Rome for a council presided over by Pope Damasus. They appealed to Gratian to ban Damasus' rival Ursinus, suppress the Roman Donatists, and endorse (promulgate?) a new system of ecclesiastical legislation. On his part the Emperor conceded Rome's right to hear cases of deposed bishops from the western provinces and metropolitans from the East.<sup>72</sup>

In A.D. 376 Gratian issued an edict of toleration which assured freedom of worship to all Christian factions except the Manichaeans, Photinians and Eunomians. Contemporary ecclesiastical historians Socrates, Sozomen and Theodoret saw in it a welcome sign of an end of persecutions of the Catholic Church under the pro-Arian Emperor Valens.<sup>73</sup>

<sup>67</sup> F. Dvornik, *Emperors, Popes and General Councils*, "Dumbarton Oaks Papers" 1951, vol. 6, p. 1–23.

<sup>68</sup> The Theodosian Code: J. Gaudemet, s.v. *Theodosien (Code)* [in:] *Dictionnaire de droit canonique*, ed. R. Naz, Letouzey et Anne, Paris 1935–1965, vol. VII, Col. 1215ff. After the its promulgation of the Theodosian Code in 438 imperial *leges* about religion and church affairs continued to be collected for publication, chiefly in the Justinian Code; quite a number of them have been preserved in private collections, e.g. *Novellae Posttheodosianae (constitutiones from A.D. 438–468)* and *Constitutiones Sirmondianae (sixteen constitutiones from A.D. 333–425)*.

<sup>69</sup> Foll. A. Dębiński, *Kościół i Prawo Rzymskie* [The Church and Roman Law], Lublin 2008, p. 28ff.

<sup>70</sup> Cf. R.M. Errington, *Roman Imperial Policy from Julian to Theodosius*, Chapel Hill 2006, p. 194–195.

<sup>71</sup> 'The Edict of A.D. 376', *C.Th.* 16.5.6; and the Rescript, *C.Th.* 6.28.1.

<sup>72</sup> The petition to the Emperor has been preserved with the letters of St Ambrose. *Ep. extr. coll.7* (CSEL 82.3, p. 191–197). Gratian's reply in the form of a rescript for the *vicarius* of Rome can be found in *Collectio Avellana* 13.

<sup>73</sup> Socrates, *HE* 5.2.1; Sozomenus, *HE* 7.1.3; Theodoret, *HE* 5.2.



Modern historians tend to interpret it as a concession to the Arians at the expense of the Niceans.<sup>74</sup> However, the edict should also be regarded as a reaction to the confusion and unrest caused, especially in the East, by the return of the Nicean Christian that had been banished by Valens. Seen from the political perspective, it was an attempt to allow the agitated congregations to sort out their problems and regroup without unhinging the church hierarchy established in the East by Valens.<sup>75</sup>

In his edict *Cunctos Populos* Theodosius I sets down his definition of orthodoxy, sketches a profile of the true believer and declares that his objective is to bring all of his subjects to the true faith.<sup>76</sup> The text of this solemn declaration, incorporated into the imperial legal code and perceived as its integral part, has become the subject of innumerable studies and debates. While some believe that it was a fully valid legal document,<sup>77</sup> others put it in the category of ceremonial addresses (like an inaugural throne speech or a throne speech)<sup>78</sup> or a bundle of key objectives of a “political programme” (with no legal force).<sup>79</sup>

Robert M. Errington claims, in opposition to the modern majority opinion, that *Cunctos populos* did not target a broad audience. The Edict was intended as a direct address to the people of Constantinople, a city already envisioned as pre-eminent in the structure of the Church to match its role as a centre of government. The Edict was to guarantee the transfer of control over the Church in the capital into the hands of a bishop who represented the Trinitarian doctrine held by the majority of bishops in the West and therefore endorsed by Theodosius and his western advisors. Although there had been cases of emperors removing *personae non gratae* from bishoprics and banning heterodox religious practices in the past, *Cunctos Populos* was unprecedented. It was the first time that imperial (secular) legislation was used to control episcopal appointments through a vetting procedure which narrowed *ex ante* the number of eligible candidates to those who professed the same religious convictions (dogmas) as the emperor.<sup>80</sup> The procedural filter, the centerpiece of the Edict, left no doubt about its goal – to give the edge to the orthodox which were then the minority party in the capital.<sup>81</sup>

While the *Cunctos populos* may appear as a product of the emperor’s arbitrary will, its shape was determined, like any of his laws, by a shifting balance of various interests. Moreover, the beginning of a reign was always the best time for the representatives of

<sup>74</sup> Cf. e.g. A. Piganiol, *L’empire Chretien*, Paris 1972, p. 228-229; M. Meslin, *Les Ariens d’Occident*, Paris 1967, p. 46, n. 85.

<sup>75</sup> N.B. McLynn, *Ambrose of Milan*, p. 91.

<sup>76</sup> Cf. the discussion of this edict in e.g. A. Barzano, *Il cristianesimo nelle leggi di Roma imperiale*, Milan 1996; J. Gaudemet, *L’Édit de Thessalonique: police locale ou declaration de principe* [in:] *Aspects of the Fourth Century*, ed. H.W. Pleket and A.M.F.W. Verhoogt, Leiden 1997, p. 43–51; R.M. Grant, *Augustus to Constantine: The Rise and triumph of Christianity in the Roman World*, Louisville 2004; P. Maraval, *Le Christianisme de Constantin à la conquête arabe*, Paris 1997; J. Harries, *Law and Empire in Late Antiquity*, Cambridge 1999.

<sup>77</sup> W. Ensslin, *Die Religionspolitik des Kaisers Theodosius d.Gr.*, München 1955, p. 16–27.

<sup>78</sup> Cf. N.Q. King, *The Emperor Theodosius and the Establishment of Christianity*, London 1964, p. 28–29.

<sup>79</sup> A.M. Ritter, *Das Konzil von Konstantinopel und sein Symbol*, Göttingen 1965, p. 28–31.

<sup>80</sup> R.M. Errington, *Roman Imperial Policy*, p. 218.

<sup>81</sup> *Ibidem*.

such interests to seek favour with the new ruler.<sup>82</sup> They need not have been disappointed as Theodosius had a reputation for openhanded generosity.<sup>83</sup>

In A.D. 381 the articles of *Cunctos populos* were repeated and even expanded in an edict (*Epistula*) addressed to Eutropius (*C.Th.* 16.5.6,3). It targeted the clergy that were in charge of churches and church property in the provinces of Illyricum. The edict ordered the removal of unorthodox bishops from towns they depended on for their income and influence. The loyalists that replaced them had the mission to turn around those strategically important centers of administration and trade. The fact that the rural population was allowed to carry on as before suggests that a broad conversion drive was not Theodosius' priority.<sup>84</sup> At any rate, it would not have been a wise move as there were still a lot of Arian Goths in the countryside at that time. An all-out clampdown would only have united the opposition in both town and country and given them religion as a rallying point.<sup>85</sup>

An executive order in the follow-up to the First Council of Constantinople took the campaign against the heretical (non-Nicene) clergy to Asia. Auxonius, *Proconsul Asiae*, was ordered to find out the dissenters and organize a transfer of their churches and episcopal sees to those priests and bishops who followed the Nicene-Constantinopolitan Creed.<sup>86</sup> Auxonius was to prove the orthodoxy of the latter by checking whether they were in communion with at least one prelate from the list supplied by the authorities.<sup>87</sup> It is significant that both *Cunctos Populos* and *C.Th.* 16.1.3 formulate two criteria of orthodoxy, a private test of conscience as well as the demonstration of Eucharistic communion with loyalist bishops. A similar formula can be found in the Constitution of Emperor Arcadius (*C.Th.* 16.4.6; from A.D. 404), a reminder to the provincial prefects that the ban on assemblies of persons who profess the orthodox creed but spurn communion with the approved bishops has to be enforced with all diligence.<sup>88</sup> The Eucharistic communion test was a verifiable indicator of the hearts and minds of the probands. Its introduction marked also the incorporation into imperial law of specific religious norms and symbols, and the use of that law as an instrument of enforcing religious conformity.<sup>89</sup>

The year following *C.Th.* 16.1.3 saw a series of edicts tightening the net round the heresies condemned at the Council and increasing the punishments for the wrongdoers. At each step more sects and groups, often rather marginal, were added to the blacklist. All in all, these imperial laws were little more than enactments (executive or complementary) of norms and rules laid down by ecclesiastical councils.<sup>90</sup>

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<sup>82</sup> *Amm. Marc.* 30.9.3; that petitions and pressure could have had an impact on Theodosius, cf. *C.Th.* 10.10.12–15 from A.D. 380.

<sup>83</sup> Zosimos., 4.25.1, cf. also 4.27.1, and N.B. McLynn, *Ambrose of Milan*, p. 107–108.

<sup>84</sup> R.M. Errington, *Roman Imperial Policy*, p. 223.

<sup>85</sup> *Ibidem*.

<sup>86</sup> *C.Th.* 16.1.3 (30 July 381).

<sup>87</sup> Cf. R.M. Errington, *Roman Imperial Policy*, p. 230–231.

<sup>88</sup> Cf. Sozomenus, *HE* 8.24.12.

<sup>89</sup> Cf. L. De Giovanni, *Ortodossia, eresia, funzione dei chierchi. Aspetti e problemi della legislazione religiosa tra Teodosia I e Teodosio II* [in:] *Atti dell'Accademia Romanistica Constantiniana. VI Convegno Internazionale*, Città di Castello 1986, p. 59–76, 61–63.

<sup>90</sup> Cf. the legal opinion of Sozomenus in *HE* 7.12.11–12.

In June 383 Theodosius summoned the leaders of the main Christian factions to Constantinople. The conference took place against the background of continuing unrest provoked by the Emperor's hard-line pro-Nicene policy.<sup>91</sup> The orthodox were represented by Nectarius, the Novatians by Agelius, the homoian Arians by Demophilus, the anomoean Arians by Eunomius and the Macedonians by Eleusius of Cyzicus.<sup>92</sup> Each participant had been asked to prepare a written statement of his view of the Trinity. Theodosius, after collecting their papers, tore them all up except the one with the Nicene creed. After that display of the Emperor's indignation, the leaders of the dissenting parties began to bend to his will and eventually renounced their heresies.<sup>93</sup> Socrates reports that Theodosius refrained from persecuting any of them, though he did expel Eunomius for continuing to do harm by making speeches and organizing meetings in people's homes. In general, however, Theodosius was tolerant of people meeting "in their own places" and expressing their faith as they saw fit, in accordance with their intellectual attitudes.<sup>94</sup> While Socrates leaves out of his picture a string of punitive laws against the Eunomians, the Arians and the Macedonians, Sozomen is well aware of them and their severity. But he too tones down their harshness by calling them instruments of intimidation rather than punishment.<sup>95</sup> In 388 Theodosius let it known that he did not equate loyalty to the emperor with religion by appointing Flavius Eutolmius Tatianus praetorian prefect of the East and his son Proculus *praefectus urbi* of Constantinople.<sup>96</sup> The Emperor's first reaction to the burning down of the synagogue of Kallinikon by the local Christians and to the sacking of a chapel of a Gnostic sect by a group of monks showed pragmatism and fairness. He had the Christians rebuild the synagogue and the monks punished.<sup>97</sup> What all these cases indicate is that the imperial legislation of this period of the Late Roman Empire tried combine the postulates of *symphonia* with a pragmatic concern for preserving peace and public order.

#### IV. The Emperor and the issue of papal primacy

The inauguration of Constantinople as the new capital opened the way to a close interrelationship between the life of the church and the activities of the emperors. That, in turn,

<sup>91</sup> Cf. Socrates, *HE* 5.10 and Sozomenus, *HE* 7.12.

<sup>92</sup> Socrates, *HE* 5.10.24 and Sozomenus, *HE* 7.12.9.

<sup>93</sup> R.M. Errington, *Roman Imperial Policy*, p. 231–232.

<sup>94</sup> Socrates, *HE* 5.20.4–5.

<sup>95</sup> Sozomen, *HE* 7.12.11–12 (*in fine*).

<sup>96</sup> R.M. Errington, *Roman Imperial Policy*, p. 237.

<sup>97</sup> Cf. Ambrosius Mediolanensis, *Ep.* 74 (*Ep. extra coll. Ia* and *Ep. extra coll.*) and N.B. McLynn, *Ambrose of Milan*, p. 298–309. On a law forbidding bands of monks to enter cities and the repeal of that law in 392; the removal of Tatianus and Proculus; and the extraordinary career of Flavius Rufinus in the Eastern Empire cf. R.M. Errington, *Roman Imperial Policy*, p. 246ff. On attempts to reach a peaceful solution to the conflict Alexandrian Serapeum, *ibidem*, p. 250–251. Soon another law was issued imposing high punishments on governors for admitting petitions for appeal or pardon in criminal cases. No one, bishops and clergy not excepted, was allowed to encourage a criminal sentenced for violations of public order to appeal or to intervene on his behalf (*C.Th.* 11.36.31).

led to the identification of the center of the Eastern Church with the center of the Empire. For many this overlap was a vision of an Imperial Church come true.<sup>98</sup> It was a church based on the legal and administrative infrastructure of the Empire, governed jointly by the bishops and the emperor.<sup>99</sup> This gave rise to the danger that the juridical functions of the Church would become indistinguishable from the competences of the emperor and the bishops' role would be reduced to an executive of liturgical experts. However, alongside the Byzantium there was still the Church in the West with the Pope as its head.

One way of getting the extraordinarily diverse developments in the Church of the 4th and 5th century into focus is to ask the question "What was believed to be the source of the Church's supreme authority and the source of its legal norms?" Was it the Apostolic Tradition and its institutional heritage, including the episcopal office and the primacy of Rome, or the Emperor's *potestas* and imperial legislation?<sup>100</sup> An important date in the history of Rome's rise to power was A.D. 385 when Pope Siricius wrote the first decretal, i.e. a letter concerned with rules and disciplinary measures, and which, following the recommendations of the Synod of Sardica, combined a pastoral tone with stern juridical precision and force. In this decretal, to be promulgated in Hispania and the neighbouring provinces, Siricius states that the Holy See is the universal judge and legislator of the Church.<sup>101</sup> Moreover, he likens the relationship of the Bishop of Rome to the Church to that of 'the head to the body'.<sup>102</sup> The decretals, which were ranked on a par with the canon law, were immensely important in establishing the primacy of the Pope over the ecclesiastical hierarchy.

The popes sought also other means of expanding their position of supremacy in the Church, chiefly through the accumulation of prerogatives, eg. the privilege of granting the pallium (a symbol of jurisdiction of an archbishop) or the authority to ratify conciliar decrees (without papal ratification they are a dead letter).<sup>103</sup> The popes did not

<sup>98</sup> Y. Congar, *After Nine Hundred Years*, p. 7–8. Cf. A. Karatschow, *Die Entstehung der kaiserlichen Synodalgewalt unter Konstantin dem Grossen, ihre theologische Begründung und ihre kirchliche Rezeption, Kirche und Kosmos*, "Orthodoxes und Evangelisches Christentum", Studienheft No. 2, Witten 1950, p. 137–152.

<sup>99</sup> By establishing their function as "guardians" of Christendom the emperors gave the canons the force of law; the role of the Church was to formulate goals and ends, but the legal means were in the hand of the emperor. (cf. J. Gaudemet, *Droit Romain et Droit Canonique en Occident aux IV<sup>e</sup> et V<sup>e</sup> siècles* [in:] *Actes du Congrès de droit canonique. Cinquantenaire de la Faculté de droit canonique, Paris 22–26 avril 1947*, Paris 1950, p. 254–267).

<sup>100</sup> Cf. e.g. T. Jalland, *The Church and the Papacy*, London 1944, p. 246–249, 255–257, 258; and *The Primacy of Peter: Essays in Ecclesiology and the Early Church*, ed. J. Meyendorff, Crestwood NY 1992.

<sup>101</sup> "Ut haec quae ad tua consulta rescriptimus, in omnium coepiscoporum nostrorum perferri facias notionem, et non solum eorum qui in tua sunt dioecesi constituti, sed etiam ad universos Carthaginenses ac Boeticos, Lusitanos atque Gallicos, vel eos qui invicinis tibi collimitant hinc inde provintiis haec quae a nobis sunt salubri ordinatione disposita, sub litterarum tuarum prosecutione mittantur." (*Epistola decretalis papae Siricii*, PL 13.1132 and PL 56. 555). Cf. also T. Jalland, *The Church and the Papacy*, p. 265–277.

<sup>102</sup> "Explicuimus, ut arbitror, frater carissime, universa quae digesta sunt in quaerelam, et ad singulas causas, de quibus per filium nostrum Bassianum presbiterum ad Romanam Ecclesiam, utpote ad caput tui corporis, retulisti, sufficientia, quantum opinor, responsa reddidimus. Nunc fraternitatis tuae animum ad servandos canones et tenenda decretalia constituta magis ac magis incitamus. [...] Et quamquam statuta Sedis Apostolicae, vel canonum venerabilia definita nulli sacerdotum Domini ignorare sit liberum" [*Epistola decretalis papae Siricii*, PL 13.1132 and PL 56.555].

<sup>103</sup> Y. Congar, *After Nine Hundred Years*, p. 101–103.

avoid confronting the βασιλεύς or the Patriarch of his capital city over issues of church government; they consistently rejected all claims based on imperial or any other kind of law. However, of all the justifications of the papal primacy none was as important as the Petrine succession. In his decretal Siricius virtually identifies the Bishop of Rome with Apostle Peter:

Quia officii nostri consideratione non est nobis dissimulare, non est tacere libertas: quibus major cunctis Christianae religionis zelus incumbit, portamus onera omnium qui gravantur. Quin immo haec portat in nobis beatus Apostolus Petrus, qui nos in omnibus, ut confidimus, administrationis suae protegit et tuetur haeredes.<sup>104</sup>

Pope Boniface I (418–422) echoes Siricius by saying that just as Christ handed over to Peter the Rule and the plenitude (“regimen... et summa”) of the universal Church, Peter passed them on to the successive bishops of Rome.<sup>105</sup> Whoever opposed him could not remain a member of the Christian community (“Christianae religionis extorris”) nor could expect salvation (“habitor caelestium non poterit esse regnorum”). Pope Gelasius I (492–496) was the first to use the designation *vicarius Petri* or *vicarius Christi*.<sup>106</sup> During the Acacian schism, which complicated Rome’s relations with Constantinople, Gelasius fought hard to reassert the primacy of papal jurisdiction in the entire Church (a claim accepted with different degrees of readiness by the Eastern Churches).<sup>107</sup> The controversy spurred him to formulate a more general theory of relations between church and state that went down in history as the Gelasian doctrine. In a famous letter to the Emperor Anastasius Gelasius outlined the “doctrine of the two powers”, according to which this world is governed by two powers, the sacred authority of bishops (*auctoritas sacrata pontificum*) and royal power (*regalis potestas*). Each of them is independent and supreme in its own sphere, but subordinate to the other in that of the other. The emperor, as a sovereign by the grace of God, is entitled to obedience in the secular domain. But he is not ordained, and therefore has to give way to the priests, and especially to the Bishop

<sup>104</sup> Siricius, *Epistola decretalis papae Siricii*, PL 13.1132 and PL 56.555.

<sup>105</sup> Bonifacius I Papa, Ep. 14, PL. 20, 777A–779A.

<sup>106</sup> Cf. A. Blaise, H. Chirat, *Vicarius* [in:] *Dictionnaire latin français des auteurs chrétiens*, Strasbourg 1954. E. Caspar, *Geschichte des Papsttums von den Anfängen bis zur Höhe der Weltherrschaft*: bd. 1: *Römische Kirche und Imperium Romanum*, Tübingen 1930, 430 f.) traces the meaning of the term “vicar”, or deputy, with reference to Peter: “*cuius [= Petri] vice fungimur*” (cf. PL 54.147AJ) back to Pope Leo I. The history of both titles *vicarius Petri* and *vicarius Christi* has also been traced by M. Maccarrone, *Vicarius Christi: Storia del titolo papale (Lateranum, N.S. 18, 1–4 [Roma 1952])*. He claims that the idea goes as far back as Cyprian of Carthago (d. 258), but provides no indisputable evidence earlier than Apionius. He demonstrates though, against Caspar, that the phrase was used of the pope by his legates at the Council of Ephesus (431) (cf. ACO, 1.1.3, 60.25–35). Documents of Pope Felix III (483–492) refer to the pope as *qualiscumque vicarius*, i.e. ‘a kind of vicar’ of Peter. Cf. A. von Harnack, *Christus praesens – vicarius Christi*, Berlin 1928, p. 415–446.

<sup>107</sup> Cf. *Documents illustrating Papal Authority A.D. 96–454*, ed. E. Giles, London 1952; B.J. Kidd, *The Roman Primacy to A.D. 461*, London 1936; L. Duchesne, A.H. Mathew, *The Churches Separated from Rome*, New York–London 1907; J. Chapman, *Studies in Early Papacy*, London 1928; E. Batiffol, *Le catholicisme des origines à S. Leon*, 4 vols., Paris 1909–1924; idem, *Cathedra Petri*, Études d’Histoire ancienne de l’Église, Paris 1938; S.H. Scott, *The Eastern Churches and the Papacy*, London 1928. The literature cited here and in the preceding footnote foll. M.V. Anastos, *Constantinople and Rome: A Survey of the Relations between the Byzantine and the Roman Churches*, [http://www.myriobiblos.gr/texts/english/milton1\\_2.html](http://www.myriobiblos.gr/texts/english/milton1_2.html) (access: 15 February 2016).

of Rome, in all ecclesiastical affairs. Moreover, emperors ought to adjust their decisions to the orders or instructions of bishops.<sup>108</sup> Only Christ is Priest and King. Here on earth the two functions are separated: the emperors need assistance from the priests to attain eternal life while the priests depend on the emperors for the conduct of temporal affairs.

Milton V. Anastos notes that the imperial court found the doctrine of the two powers totally incomprehensible.<sup>109</sup> Anastasius did not reply to Gelasius's letter; his successors chose to ignore the papal *dicta*. In the eyes of the Byzantines, Gelasius was arrogant and his stubbornness posed a danger to the unity of the Christians. On his part, Gelasius always treated the emperor with respect, even when pressing for the removal of the name of Acacius from public prayers (the diptychs). However, his politeness barely concealed his intransigence on the matter of papal sovereignty. The Bishop of Rome could never be 'bound or loosed' by any secular power because, he insisted, the priests had greater dignity and were occupied with more serious matters than those handled by the emperor ('gravius pondus est sacerdotum').<sup>110</sup>

These quotations indicate that while facing off claims of the emperor's supremacy over the bishops in the complex historical realities of the 4th–5th century, the popes worked out their own model of *symphonia*.<sup>111</sup>

To conclude this analysis of the ideas of church-state relationship in the Latin Church let us briefly consider the contribution of St Augustine. He distinguishes three "levels" of conduct within a political community:

- 1) the ruler and the citizens guided by the faith and virtues of the City of God;
- 2) citizens who strive to the common good by practicing the "temporal" virtues;
- 3) those who are not driven by virtues of any kind, but by the profit motive or the desire for peace and quiet.<sup>112</sup>

For Augustine pagan Rome, *caput terrenae civitatis* (*Civ. Dei* XV 5), is an antitype of City of God, with polytheism as a hallmark of its corruption.<sup>113</sup> He looks to Christianity for a restorative antidote to Rome's senectitude, offering it a new prospect of self-realization and salvation.<sup>114</sup> Does Augustine want the emergence of a theocratic *Imperium Romanum* or a "marriage" of the Church and Empire? It seems that he does not find such a close union absolutely necessary.<sup>115</sup> A whole range of options are possible, from theocracy to a co-operation modelled on the *symphonia*, with the Church having an in-

<sup>108</sup> "[...] Non legibus publicis, non a potestatibus saeculi, sed a pontificibus et sacerdotibus omnipotens Deus Christianae religionis dominos et sacerdotes voluit ordinari, et discuti, recipique de errore remeantes Imperatores Christiani subdere debent executiones suas ecclesiasticis praesulibus, non praeferre." [*Epistola s. tractatus Felicis III Papae*, PL 58.944C]; and "[...] ad sacerdotes enim Deus voluit, quae Ecclesiae disponenda sunt, pertinere, non ad saeculi potestates, quae, si fideles sunt, ecclesiae suae et sacerdotibus voluit [Deus] esse subiectas. Non sibi vindicet alienum jus, et ministerium quod alteri deputatum est [...]" (*ibidem*).

<sup>109</sup> M.V. Anastos, *Constantinople and Rome*.

<sup>110</sup> Gelasius, *Ep. Ad Athanasium Imp.*, PL 59.42 A.

<sup>111</sup> Cf. P. Toubert, *La theorie gelasienne des deux pouvoirs. Propositions en vue d'une revision* [in:] *Studi in onore di Giosue Musce*, ed. C. Damiani Fonsceca, V. Sivo, Bari 2000, p. 519–540.

<sup>112</sup> D.X. Burt, *Cain's City* [in:] *Augustinus, De civitate Dei*, ed. Ch. Horn, München 2010, p. 205.

<sup>113</sup> J.J. O'Meara, *Charter of Christendom; the significance of the City of God*, New York 1961, p. 102.

<sup>114</sup> *Ibidem*, p. 108.

<sup>115</sup> Cf. *ibidem*, p. 108–109. The argument that Augustine did not envisage a full separation of the political and the religious (Christian) sphere cf. A. Eckmann, *Stosunek św. Augustyna do państwa rzymskiego* [St Augustine and the Roman State] [in:] *Chrześcijaństwo a życie publiczne w Cesarstwie Rzymskim III–IV*



fluence upon the state and the Emperor throwing his weight to support the cause of true religion.<sup>116</sup> Although Augustine did not identify the *Civitas Dei* with any political entity on this earth, his work is open to interpretations of this kind.<sup>117</sup> During the Middle Ages identifications of the City of God with an actual earthly state were made in behalf of the Holy Roman Empire, which saw itself as a Christian community governed by “Two Swords”, the temporal and the spiritual. It is aptly characterized by Augustine’s phrase *Omnium Christianorum una res publica est*<sup>118</sup>, although taken out of context it is more than misleading. Augustine never upheld the idea of *one and only* commonwealth of the Christian people. Yet the adoption of this unitarian formula by the Holy Roman Empire, a “holy” state, led necessarily to the elevation of the emperor – protector of the Church and canon of St Peter’s – to the level of a sacred (sacerdotal) ruler.<sup>119</sup> Looking at the problem of unity and peace in the Christian world from a jurisprudential point of view and drawing on Augustine’s legacy, Henricus de Segusio, a 13<sup>th</sup> century canonist also known as Hostiensis, stressed the importance of law in defining the relationship between *sacerdotium* and *imperium*.<sup>120</sup> Although he has been regarded as “extreme papalist”, he acknowledged the distinction between the two powers and their separate jurisdictions. He believed that the emperor had *plenitudo potestatis* in civil affairs and that the pope should not willfully intrude into the emperor’s domain.<sup>121</sup> Conversely, the monarch had no right to interfere with the affairs of church. The two powers, Hostiensis urged, should co-operate for the common good of the Christian community.<sup>122</sup> The secular power should assist the ecclesiastical hierarchy in combating heresies.<sup>123</sup> According to Hostiensis canon law guarantees *salus animarum* and therefore cannot allow that highest good, the salvation of souls, to come to harm through bad or incompetent policies of kings and princes. The pope’s right to intervene is thus circumscribed: he can exercise it as a corrective in special circumstances.<sup>124</sup> In this and other cases Hostiensis’ argument is ultimately rooted in his belief that the law of the *ordo ecclesiasticus* is the conduit through which the *Civitas Dei* can make its pilgrimage through this temporal world.<sup>125</sup> It would appear then that Henricus de Segusio’s approach was not dissimilar to the Byzantine notion of *symphonia*, although his was a different historical circumstances and intellectual climate. In spite of all these differences his work to a large extent depended on the same sources of the Christian thought.

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wieku [Christians and Public life in the Roman Empire of the 3<sup>rd</sup>–4<sup>th</sup> C. A.D.], ed. J. Śrutwa, Lublin 1988, p. 213–262.

<sup>116</sup> Cf. J.J. O’Meara, *Charter of Christendom*, p. 109–110 (*Civ. Dei* V 24).

<sup>117</sup> J.N. Figgis, *The Political Aspects of St Augustine’s City of God*, London 1921, p. 84.

<sup>118</sup> *Ibidem*.

<sup>119</sup> Cf. e.g. *ibidem*, p. 84–85, where the views of Engelbert of Admont are presented, and H.J. Bermann, *Law and Revolution*, Cambridge, Mass 1983, vol. I, *passim*.

<sup>120</sup> C. Gallagher, *Canon Law and the Christian Community: the Role of Law in the Church According to the Summa Aurea of Cardinal Hostiensis*, Roma 1978, p. 103–104.

<sup>121</sup> *Ibidem*, p. 104–105.

<sup>122</sup> *Apparatus*, I 31, 1, s.v. *fuert*, foll. *ibidem*, p. 107–108.

<sup>123</sup> *Ibidem*.

<sup>124</sup> *Ibidem*, p. 107, drawing on J.A. Watt, *The Use of the Term plenitudo potestatis by Hostiensis* [in:] *Proceedings of the Second International Congress of Medieval Canon Law*, Vatican City 1965, p. 170.

<sup>125</sup> *Ibidem*.

## V. Summary

A difficulty that any study of religion and politics in the Roman Empire and its successor Byzantium has to confront is the absence of a “constitution”, a key document spelling out the principles of the state-church relations. As a consequence it is extremely difficult to arrive at a clear, unequivocal interpretation of any given text. So for example the famous assertion of Theodore Balsamon, the 12<sup>th</sup> century Bishop of Antioch, that ‘the Emperor is subject neither to the laws nor to the canons’ seems self-evident and needs no interpretation. Yet when it restored to its context one cannot but conclude (*argumentum a rubrica*) that Balsamon refers specifically to the question of disciplinary canons and does not to make a broad, fundamental statement.<sup>126</sup> The problems with caesaropapism are similar. We can try to trace its manifestations in Byzantium by studying the history of the conflict between emperors and patriarchs. The direct consequences of particular confrontations open an insight into the mechanism of power in the Empire, but that is not enough. We need to study the long-term consequences in order to identify the real game changers for the Church.<sup>127</sup>

In the early Eastern Empire most battles were fought on the ground of dogmatics, i.e. the fundamentals. At times the emperor had the upper hand, yet none of the heterodox doctrines favoured by the emperors found the Church’s acceptance.<sup>128</sup> This is not to deny that in the great debates of the 4<sup>th</sup> and 5<sup>th</sup> century individual emperors were able to impose their will on the Church, at least for the time of their reign. But even then there was always a periphery with dissenting bishops *and* an alternative ecclesiastical structure staying the course with a sense of confidence based on the Apostolic Succession.

To delineate the scope of the emperor’s power in the Church it is necessary to get a clear view of his overall competences. In the purely secular sphere the emperor acted as a sovereign lawmaker; in the domain of religion he was entitled to participate in church government (ecclesiastical management and administration). In case of a conflict, he held the reins of power on the “external” structures of the Church, although in exercising this function he was obliged to involve its hierarchy.<sup>129</sup> In no circumstances, however, did the emperor’s competences extend to the essence, or inner core, of the Church’s mission – the sacraments and the dogmas.

In some discussions about the control exercised by the emperor over the Church the critique of the term *caesaropapism* led to suggestions of replacing it by designations like *caesaroprocuratorism*, *caesaropaternalism*, or even *caesarocybernesis*. However, none of these alternatives appear to be adequate. The concept of paternalism falls short of describing the role of the emperor in the Byzantine church while *caesarocybernesis* goes too far and replaces the indispensable religious reference of “papism” with “cybernesis”, an odd word that smacks of modern technology.<sup>130</sup> Another suggestion would be to turn to the titles adopted by English monarchs after England’s break with Rome. However,

<sup>126</sup> D.J. Geanakoplos, *Church and State*, p. 383–384.

<sup>127</sup> *Ibidem*, p. 385.

<sup>128</sup> *Ibidem*, p. 386.

<sup>129</sup> Cf. P. Sherrard, *Greek East and Latin West*, London 1955, p. 93.

<sup>130</sup> D.J. Geanakoplos, *Church and State*, p. 398.

neither the Defender of the Faith or Supreme Head (later Governor) of the Church of England match the position of the Byzantine emperor. ‘The Supreme Governor of the Church’ seems to go too far, and at the same time lacks the connotations of sanctity and mystic dignity which are essential to the Byzantine understanding of that office. Having said that, we should stop using the word *caesaropapism* with reference to Byzantium or, if it cannot be avoided, use it with all the necessary qualifications (to disarm its in-built, misleading suggestion of absolutist control).<sup>131</sup>

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<sup>131</sup> *Ibidem*, p. 399.

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